

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 43 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 36-7-32 IS ADDED TO THE INDIANA CODE
- 4 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 5 UPON PASSAGE]:
- 6 **Chapter 32. Public Improvement Areas**
- 7 **Sec. 1. This chapter applies to all units except townships.**
- 8 **Sec. 2. The definitions in IC 36-1-2 apply throughout this**
- 9 **chapter.**
- 10 **Sec. 3. As used in this chapter, "infrastructure" includes:**
- 11 **(1) roads;**
- 12 **(2) streets;**
- 13 **(3) sidewalks;**
- 14 **(4) curbs;**
- 15 **(5) alleys;**
- 16 **(6) common areas;**
- 17 **(7) parking areas;**
- 18 **(8) lighting;**
- 19 **(9) electric signals;**
- 20 **(10) landscaping, including trees, shrubbery, flowers, grass,**
- 21 **fountains, benches, statues, floodlighting, gas lighting, and**
- 22 **structures of a decorative nature;**
- 23 **(11) sanitary sewers and sanitary sewer connections;**
- 24 **(12) storm water sewers and drains; and**

(13) waterworks facilities, including water towers and storage tanks, water main extensions, and connections; that serve or benefit a public improvement area created under this chapter. The term also includes the right-of-way for the infrastructure and the acquisition of property necessary for the development of the infrastructure.

Sec. 4. (a) The legislative body of a unit may establish a public improvement area for the purpose of providing infrastructure in a residential development in order to:

- (1) benefit the public health, safety, morals, and welfare;
- (2) increase the economic well-being of the unit and the state; and
- (3) protect and increase property values in the unit and the state.

(b) Providing infrastructure in a residential development is a public use and purpose for which public money may be spent and property may be acquired.

Sec. 5. (a) All the real property within a public improvement area constitutes a special taxing district for the purpose of the special assessments to be apportioned, levied, and collected as provided in this chapter. All the real property within a public improvement area is considered to be benefited by the infrastructure developed under this chapter to the extent of the special assessments apportioned, levied, and collected under this chapter.

(b) The amount of the assessment levied on a parcel must bear a reasonable relationship to the benefits accruing to the parcel. The assessments may be apportioned among the parcels in the public improvement area in any manner reasonably representative of the benefits accruing to a parcel from the infrastructure, including the following:

- (1) Assessed value or market value of the parcel.
- (2) Assessed value or market value of any improvement on the parcel.
- (3) Size of any improvement on the parcel.
- (4) Size of the parcel.
- (5) Any other similar factors, as determined under the ordinance adopted under section 8 of this chapter.

(c) The unit may retain or employ qualified personnel or other consultants to develop the formula for determining the percentage of the total benefit accruing to each parcel of real property within the proposed public improvement area and the method for apportioning the assessments to be levied on the real property in the proposed public improvement area.

Sec. 6. (a) The legislative body of a unit:

- (1) on its own motion; or
- (2) if a verified petition for the establishment of a public

1 improvement area is filed by fifty-one percent (51%) of the
 2 owners of real property in the proposed public improvement
 3 area;

4 shall hold a hearing on the establishment of a public improvement
 5 area.

6 (b) A petition requesting the establishment of a public
 7 improvement area must include the following information:

8 (1) The boundaries of the proposed public improvement area.

9 (2) The names and addresses of the owners of real property
 10 within the proposed public improvement area.

11 (3) A detailed description of the infrastructure to be
 12 developed to serve the proposed public improvement area and
 13 the estimated cost of the infrastructure to be developed.

14 (4) The plan for the application of assessment revenue to the
 15 cost of the infrastructure to be developed to serve the
 16 proposed public improvement area.

17 (5) The proposed formula for determining the percentage of
 18 the total benefits accruing to each parcel of real property
 19 within the proposed public improvement area and the method
 20 for apportioning the assessments to be levied on the real
 21 property in the proposed public improvement area.

22 (6) The estimated number of years that assessments will be
 23 levied.

24 Sec. 7. (a) After adoption of a motion or receipt of a petition
 25 under section 6 of this chapter, the legislative body shall:

26 (1) publish notice of a hearing on the proposed public
 27 improvement area, one time, in accordance with IC 5-3-1; and

28 (2) mail a copy of the notice to each owner of real property
 29 within the proposed public improvement area;

30 at least ten (10) days before the hearing.

31 (b) The notice required by subsection (a) must include:

32 (1) a description of the boundaries of the proposed public
 33 improvement area;

34 (2) a description, including cost estimates, of the proposed
 35 infrastructure to be developed to serve the public
 36 improvement area;

37 (3) a summary of the plan for the application of assessment
 38 revenue to the cost of the infrastructure to be developed to
 39 serve the proposed public improvement area;

40 (4) the proposed formula for determining the percentage of
 41 the total benefits accruing to each parcel of real property in
 42 the public improvement area;

43 (5) the date, time, and location of the hearing; and

44 (6) a statement that, at the time fixed for the public hearing,
 45 the legislative body will receive and hear remonstrances and
 46 objections from persons interested in or affected by the
 47 proceedings pertaining to the establishment of the proposed

1 public improvement area and will determine the public utility
2 and benefit of the establishment of the public improvement
3 area and the development of the infrastructure.

4 (c) All taxpayers and owners of real property within the
5 proposed public improvement area shall be considered notified of
6 the pendency of the hearing and of subsequent acts, hearings,
7 adjournments, and proceedings of the legislative body by the notice
8 given under this section.

9 (d) At the public hearing, which may be adjourned from time to
10 time, the legislative body shall hear all persons interested in the
11 proceedings and shall consider all written remonstrances and
12 objections that have been filed on the questions of:

- 13 (1) the sufficiency of the notice;
14 (2) whether the proposed infrastructure project will be of
15 public utility and benefit; and
16 (3) whether the proposed assessment formula is appropriate.

17 Sec. 8. (a) After conducting the public hearing, the legislative
18 body, in accordance with IC 5-3-1, shall give notice of the right of
19 property owners within the proposed public improvement area to
20 sign a petition opposing the establishment of the public
21 improvement area. A petition opposing the establishment of the
22 proposed public improvement area may be filed with the county
23 auditor not more than twenty (20) days after the notice is given.
24 The following provisions apply if a petition opposing the
25 establishment of the proposed public improvement area is filed and
26 is signed by at least fifty-one percent (51%) of the owners of real
27 property in the proposed public improvement area:

- 28 (1) The proceedings for the establishment of the proposed
29 public improvement district are terminated.
30 (2) Beginning one (1) year after the filing of the petition under
31 this subsection, the legislative body may again begin
32 proceedings to establish the same proposed public
33 improvement area. Before establishing the proposed public
34 improvement area, the legislative body must comply with the
35 requirements of this section and section 7 of this chapter and
36 this subsection. Establishment of the proposed public
37 improvement area is subject to the petition procedure
38 established by this subsection.

39 (b) If a petition opposing the establishment of a public
40 improvement area is not filed within the time specified in
41 subsection (a), or if a petition filed under subsection (a) is not
42 signed by at least fifty-one percent (51%) of the owners of real
43 property in the proposed public improvement area, the legislative
44 body, after weighing all the evidence, may adopt an ordinance
45 establishing the public improvement area if it determines that:

- 46 (1) the infrastructure to be developed will provide benefit to
47 the owners of real property in the public improvement area

1 and will be of public utility and benefit; and

2 (2) the apportionment of the assessments is appropriate and
3 bears a reasonable relationship to the benefits to be provided.

4 (c) An ordinance adopted under this section must include:

5 (1) the boundaries of the public improvement area;

6 (2) the formula for determining the percentage of the total
7 benefits accruing to each parcel of real property within the
8 public improvement area and for apportioning the
9 assessments to be levied and collected; and

10 (3) the estimated number of years that assessments will be
11 levied.

12 (d) A copy of an ordinance adopted under this section, certified
13 by the unit's clerk, shall be recorded in the office of the recorder of
14 each county in which all or a part of the public improvement area
15 is located.

16 Sec. 9. The legislative body must conduct a public hearing
17 before amending or repealing an ordinance establishing a public
18 improvement area. The legislative body shall give notice of the
19 hearing in accordance with IC 5-3-1. The notice must:

20 (1) set forth the substance of the proposed amendment;

21 (2) state the time and place where written remonstrances
22 against the proposed amendment may be filed;

23 (3) set forth the time and place of the hearing; and

24 (4) state that the legislative body will hear any person who has
25 filed a written remonstrance during the filing period set forth
26 under subdivision (2).

27 Sec. 10. (a) Using the formula established for determining the
28 percentage of the total benefit accruing to each parcel of real
29 property within the public improvement area and for apportioning
30 the assessments to be levied and collected as set forth in the
31 ordinance establishing the public improvement area, the fiscal
32 officer shall annually determine the proposed assessment for each
33 parcel of real property in the public improvement area and
34 prepare a schedule of the assessments.

35 (b) The fiscal officer shall:

36 (1) certify the schedule of assessments prepared under
37 subsection (a) to the auditor of each county in which all or a
38 part of the public improvement area is located;

39 (2) file a copy of the schedule of assessments prepared under
40 subsection (a) in the office of the recorder of each county in
41 which all or a part of the public improvement area is located;
42 and

43 (3) maintain one (1) copy in the office of the fiscal officer of
44 the unit, which must be available for inspection during
45 business hours.

46 (c) Within ten (10) days after certifying the initial schedule of
47 assessments to the county auditor, the fiscal officer of the unit shall

mail notice to each owner of real property to be assessed. The notice to each owner of real property must be addressed as the name and address appear on the tax duplicates and the records of the auditor of the county in which the real property is located. The notice must:

- (1) set forth the amount of the proposed assessment; and
- (2) state that a copy of the schedule containing the proposed assessment on each parcel of real property in the public improvement area is on file and can be seen in the office of the fiscal officer of the unit.

Sec. 11. (a) Within ten (10) days after the county auditor receives the annual certification of the schedule of assessments for the public improvement area, the auditor shall deliver a copy of the certificate to the county treasurer. Each year, the treasurer shall add the full annual assessment due in that year to the tax statements of the person owning the property affected by the assessment, designating it in a manner distinct from general taxes.

(b) Assessments for benefits under this chapter are a lien upon each parcel of real property against which the benefits are assessed. The lien attaches at the time the schedule of assessments is filed with the county recorder. A lien under this chapter has equal priority with tax liens and is superior to all other liens. The lien may be foreclosed upon entry of a judgment on the lien and the real property sold on execution under IC 34-55-6. Upon the sale, the proceeds shall be prorated equally among the assessment and any delinquent taxes. A sale for a delinquent tax or delinquent assessment does not extinguish the assessment.

(c) Assessments collected under this chapter shall be paid to the unit's fiscal officer at the same time and in the same manner as the county treasurer distributes property taxes under IC 6-1.1-27.

Sec. 12. (a) The fiscal officer of the unit shall establish a public improvement area fund and shall deposit in this fund all revenues received from assessments levied and collected under this chapter.

(b) All investment earnings from money in the fund shall remain a part of the fund.

(c) Money in the fund shall be used by the unit for the financing, acquisition, construction, operation, or maintenance of infrastructure and for the administration of the public improvement area.

(d) Any unit adopting assessments under this chapter may operate the particular type of infrastructure for which an assessment has been levied and collected under this chapter.

(e) A unit may enter into an agreement with a governmental entity or other entity or person that has authority to operate the infrastructure, establishing the terms and conditions under which the infrastructure will be developed and financed.

Sec. 13. (a) The unit may issue bonds, enter into leases, or incur

- 1 other obligations to:
- 2 (1) pay any costs associated with the infrastructure to be
- 3 developed;
- 4 (2) reimburse the unit for any money advanced to pay those
- 5 costs;
- 6 (3) refund bonds issued or other obligations incurred under
- 7 this chapter;
- 8 (4) fund a debt service reserve fund;
- 9 (5) pay capitalized interest on any bonds issued or obligations
- 10 incurred under this chapter; and
- 11 (6) pay the cost of issuing the bonds or other obligations
- 12 incurred under this chapter.
- 13 (b) Bonds or other obligations issued under this section:
- 14 (1) are payable solely from money provided by assessments
- 15 collected under this chapter or other money legally available
- 16 for that purpose;
- 17 (2) may, in the discretion of the unit, be sold at a negotiated
- 18 sale at a price to be determined by the unit or in accordance
- 19 with IC 5-1-11; and
- 20 (3) may not constitute a debt of the unit for purposes of the
- 21 Constitution of the State of Indiana.
- 22 (c) Leases entered into under this section:
- 23 (1) may be for a term not to exceed fifty (50) years;
- 24 (2) may provide for payments from assessments under this
- 25 chapter, any other revenues available to the unit, or any
- 26 combination of these sources;
- 27 (3) may provide that payments by the unit to the lessor are
- 28 required only to the extent and only for the time that the
- 29 lessor is able to provide the leased facilities in accordance
- 30 with the lease;
- 31 (4) must be based upon the value of the infrastructure leased;
- 32 and
- 33 (5) may not create a debt of the unit for purposes of the
- 34 Constitution of the State of Indiana.
- 35 (d) A lease may be entered into by the legislative body of the
- 36 unit only after a public hearing at which all interested parties are
- 37 provided the opportunity to be heard. After the public hearing, the
- 38 legislative body may approve the execution of the lease on behalf
- 39 of the unit only if the legislative body finds that the service to be
- 40 provided throughout the life of the lease will serve the public
- 41 purpose of the unit and is in the best interests of its residents.
- 42 (e) Upon execution of a lease under this section, the legislative
- 43 body shall publish notice of the execution of the lease and the
- 44 approval of the lease in accordance with IC 5-3-1.
- 45 (f) The legislative body of the unit may pledge money in the fund
- 46 to pay bonds issued and lease payments or other obligations
- 47 incurred by or on behalf of the unit or a public improvement area

1 in the unit to provide the infrastructure described in an ordinance
2 adopted under section 9 of this chapter.

3 (g) A pledge under subsection (f) is enforceable under
4 IC 5-1-14-4.

5 Sec. 14. (a) With respect to any bonds, leases, or obligations for
6 which a pledge has been made under section 13(f) of this chapter,
7 the general assembly covenants with the holders of the bonds or
8 obligations, or the lessor under any lease and its bondholders, that
9 this chapter will not be repealed or amended in a manner that will
10 adversely affect the imposition or collection of the assessments
11 imposed under this chapter if any of the bonds or obligations is
12 outstanding or any lease remains unpaid.

13 (b) With respect to any bonds, leases, loans, or obligations for
14 which a pledge has been made under section 13(f) of this chapter,
15 the legislative body of the unit may not amend or repeal an
16 ordinance adopted under this chapter in a manner that will
17 adversely affect the imposition or collection of the assessments
18 imposed under this chapter if any of the bonds or obligations is
19 outstanding or any lease remains unpaid.

20 Sec. 15. (a) Any owner of real property in a public improvement
21 area may file an action contesting the validity of an ordinance
22 adopted under section 8 of this chapter.

23 (b) An action under subsection (a) must be filed in the circuit or
24 superior court of the county in which a majority of the public
25 improvement area is located not later than twenty (20) days after
26 adoption of the ordinance.

27 (c) An action to contest the validity of bonds issued or leases
28 entered into under this chapter must be brought in a circuit or
29 superior court in the county in which a majority of the public
30 improvement area is located not later than fifteen (15) days after
31 the adoption of a bond ordinance or publication of the notice of the
32 execution and approval of the lease, as the case may be. The only
33 basis for the action or judicial review is that the establishment of
34 the public improvement area does not provide public utility and
35 benefit. A court may overturn the actions of the legislative body
36 only if it finds that the actions are arbitrary and capricious.

37 Sec. 16. This chapter shall be construed liberally and is in

38 addition and supplemental to the powers conferred on a unit by
39 any other law. A unit may finance and develop infrastructure as
40 defined under this chapter in accordance with any other statute

- 1 **that authorizes or permits the financing of such infrastructure."**
- 2 Page 7, after line 20, begin a new paragraph and insert:
- 3 **"SECTION 3. An emergency is declared for this act."**
- 4 Renumber all SECTIONS consecutively.
(Reference is to ESB 43 as printed February 22, 2002.)

Representative Lytle